

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/511,766

Applicant(s)

BRIDGES ET AL.

Examiner

CLINTON OSTRUP

Art Unit

3771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-7.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771

/Clinton Ostrup/
Examiner, Art Unit 3771

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the Examiner's objection to the specification should be withdrawn because applicant has provided "a seal adapted to seal against the periphery of the user's face when worn" as the seal referred to in the claims is seal (6). Applicant then argues that a gasket is synonymous with a seal and provides a hyperlink to a dictionary definition to support that a gasket is a seal. However, the examiner respectfully disagrees.

While applicant has provided antecedent basis for "a profiled elastomeric gasket" (see page 4, line 2 of the specification) a gasket is generally used to form a seal between two objects as evidenced by Webster's New World Dictionary, Third College Edition. A gasket is a "piece of ring of rubber, metal, paper, etc. placed at a joint to make it leakproof." Thus, Webster's New World Dictionary describes how a gasket is used to form a seal, not that a gasket is a seal. Moreover, applicant argues that the seal they are referring to in the claims is element (6). Here the examiner agrees with applicant and suggests applicant consider claiming subject matter commensurate with these arguments (i.e. the gasket of element (6)).

Applicant's arguments to the 35 U.S.C. 103(a) rejection of claims 1-7 as being unpatentable over Quilter et al. (2,861,568) in view of Tischer et al. (6,328,031) have not been found convincing. Applicant argues that the examiner's motivation for combining references is technically flawed as the cited portion of Tischer teaches away from the detachable hood because it suggests "The hood is detachably connected [to the] face mask so as to secure the annular edge of the hood in the annular recess of the face mask and thereby prevent direct exposure of the individual's head to the high heat environment associated with a firefighting site."

Applicant is reminded that Tischer was used to teach a first subassembly and a second subassembly that are detachably connected to each other; whereas Quilter was used to teach the subassemblies. The subassemblies in the device taught by Tischer are detachably connected and used as a unitary device in extreme heat environments because of the seal created. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Quilter in order to make the subassemblies separable for the purposes of preventing direct exposure of wearer's head to high heat environment as taught by Tischer.

Applicant's argument that the references teach away from their combination has not been found convincing. Regarding Applicant's argument that it would not be obvious to make the subassemblies of Quilter separable and electively co-operable, it has been held that "the separation of elements, where removability would be desirable, is a design consideration within the skill of the art. In re Dulberg, 283 F. 2d 522, 129 USPQ 348 (CCPA 1961).

In the instant case, Tischer clearly teaches the desirability of separable elements that can be detachably connected and continue to operate in a manner that prevents exposure of the user to a high heat environment.

Regarding applicant's argument that the purposes of the devices are quite different, the examiner respectfully disagrees. Both references are drawn to oxygen delivery systems to be used during low oxygen concentrations and it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Quilter in order to make the subassemblies separable for the purposes of preventing direct exposure of wearer's head to high heat environment as taught by Tischer (see col.2, lines 35-40).